

01
02
03
04
05
06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
08 AT SEATTLE

09 MOLOTOV PAULING,) Case No. 04-02203-JCC-JPD
10 Petitioner,))
11 v.)) ORDER ON JURISDICTION AND
12 CHRISTINE O. GREGOIRE,)) DIRECTING ANSWER ON MERITS
13 Respondent.))
14)

15 On March 29, 2000, the petitioner Molotov Pauling was convicted of two counts of
16 second degree extortion. Dkt. No 12, Ex. 1. He was sentenced to 90 days in county jail and
17 ordered to attend a court-ordered domestic violence program, which he still attends. Dkt. No
18 12, Exs. 1, B. On October 27, 2004, petitioner filed a petition for writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254, claiming that the statute used to convict him violates the First
20 and Fourteenth Amendments to the U.S. Constitution. Dkt. No. 1. Respondent's Answer
21 asserted that the Court lacked jurisdiction to consider the petition because petitioner
22 completed his incarceration and is therefore no longer "in custody" for purposes of § 2254.
23 Dkt. No. 11. Petitioner's responded that, although he is no longer physically imprisoned, his
24 mandatory attendance at a court-ordered domestic violence program satisfies the "in custody"
jurisdictional requirement. Dkt. No. 16.

25 Having considered the parties' pleadings and state court record, the Court hereby
26 orders:

ORDER ON JURISDICTION AND DIRECTING
ANSWER ON MERITS
PAGE -1

01 (1) Petitioner is “in custody” for purposes of § 2254 and the Court has jurisdiction
 02 to consider the merits of his petition. Before federal courts can exercise jurisdiction to issue a
 03 writ of habeas corpus, a petitioner must be “in custody pursuant to the judgment of a State
 04 court . . . in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §
 05 2254(a).

06 The Supreme Court has held that “once the sentence imposed for a conviction has
 07 completely expired, the *collateral consequences* of that conviction are not themselves
 08 sufficient to render an individual ‘in custody’ for the purposes of a habeas attack.” *Maleng v.*
 09 *Cook*, 490 U.S. 488, 492 (1989) (per curiam) (emphasis added). In general, fines, the inability
 10 to vote, and the revocation of certain licenses have been held to constitute “collateral
 11 consequences” that do not satisfy the “in custody” requirement. *Williamson v. Gregoire*, 151
 12 F.3d 1180, 1183 (9th Cir. 1998) (internal citations omitted).

13 However, even when a petitioner is not physically incarcerated, conditions that
 14 “significantly restrain [his] liberty to do those things which in this country free men are entitled
 15 to do” can render him “in custody.” See *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).
 16 Court-ordered attendance at rehabilitative courses renders a petitioner “in custody” for
 17 purposes of § 2254 because requiring “physical presence at a particular place significantly
 18 restrains [one’s] liberty.” *Dow v. Circuit Court of the First Circuit*, 995 F.2d 992, 993 (9th
 19 Cir. 1993).

20 Here, petitioner’s continuing non-voluntary participation in a court-ordered domestic
 21 violence program satisfies the “in custody” requirement. Petitioner is required to attend
 22 court-ordered rehabilitative courses that require his physical presence at specific places and
 23 times. Dkt. No 12, Ex. B. Petitioner therefore suffers a significant restraint on his liberty to
 24 “do those things which free persons in the United States are entitled to do.” This Court has
 25 jurisdiction over the petition.

26 (2) Respondent shall have thirty (30) days from the date of this Order to file an

01 amended answer addressing the merits of the petition. Petitioner shall then have fifteen (15)
02 days to file an optional reply.

03 (3) The Clerk shall direct copies of this Order to all counsel of record and to the
04 Honorable John C. Coughenour.

05 DATED this 6th day of April, 2005.

06
07 /s/ James P. Donohue
08 United States Magistrate Judge
09
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26